

CHESAPEAKE BAY PRESERVATION ACT ORDINANCE GRANDFATHERING

What is Grandfathering?

Grandfathering is a provision adopted with the new regulations that limits the application of those regulations for projects that have reached some stage of the approval process.

How was the proposed Grandfathering provision developed?

The primary source was the Grandfathering provision adopted by Fairfax County when it adopted a local Chesapeake Bay Preservation Act program.

What are the basic features of the proposed Grandfathering provision?

Plans that are timely filed based on prior approvals, and diligently pursued, are grandfathered. If a grandfathered plan proposes encroachment into the RPA, the plan may go forward as proposed, provided that the plan complies with the ordinance to the "greatest extent possible." The provision also grandfathers accepted rezoning and special exception applications that have been forwarded to the Board by the Planning Commission.

What is the origin of the "greatest extent possible" provision?

The Code of Virginia provides that localities may apply their Chesapeake Bay Preservation Act ordinances to the "greatest extent possible" for individual lots on recorded plats or parcels subject to a final site plan. Va. Code § 15.2-2261(E). The Attorney General has recognized this standard in two opinions.

Are there any exceptions or limitations?

Yes.

- Compliance to the greatest extent possible may not preclude fulfillment of an approved proffer or an approved condition of a special exception or variance.
- Compliance to the greatest extent possible may not cause (i) a reduction in density, (ii) a reduction in floor area ratio, or (iii) the relocation of structures or facilities which would require an additional legislative approval.
- Construction plans for which a grading permit has been issued before the effective date may proceed without regard to the new regulations.
- Building permits issued before the effective date may proceed without regard to the new regulations.

TYPES OF PLANS OF DEVELOPMENT	NOT YET ACCEPTED- BASED ON PRIOR LEGISLATIVE APPROVAL	NOT YET ACCEPTED- BASED ON PRIOR ADMINISTRATIVE APPROVAL	OFFICIALLY ACCEPTED AND ACTIVE	APPROVED
concept development plans (ZMAP/ZCPA/ZRTD/ZMOD)	N/A	N/A	YES- IF PC HAS FORWARDED TO BOS	YES
rezoning plats	N/A	N/A	YES- IF PC HAS FORWARDED TO BOS	YES
special exception plats (SPEX/SPMI)	NO	N/A	YES- IF PC HAS FORWARDED TO BOS	YES
Variance	N/A	N/A	NO	YES
preliminary plat of subdivision	YES	N/A	YES	
preliminary/record subdivision plats	YES	N/A	YES	
family subdivision plats	N/A	N/A	YES	
subdivision waiver plat	YES	N/A	YES	
AR-1 and AR-2 division plats (SBBB)	N/A	N/A	YES	
subdivision exception	NO	NO	YES	
record plats (SBRD)	N/A	YES	YES	
dedication plats (DEDI)	N/A	YES	YES	
construction plans and profiles	YES	YES	YES	
final development plan (CV/TREC/TRC)	YES	N/A	YES	
site plans (STPL/REST/STMP)	YES	YES	YES	
site plan revisions (STPR)	N/A	NO	YES	
site plan amendments (SPAM)	N/A	NO	YES	
overlot grading plans	N/A	YES	YES	
erosion and sediment control plans	N/A	YES	YES	
Building Permit	YES	YES	N/A	